IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 30176

STATE OF IDAHO,	)	**2005 Opinion No. 50**
	)	
Plaintiff-Respondent,	)	**Filed: August 11, 2005**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
KERRY RICHARD KLINGLER,	)	
	)	
Defendant-Appellant.	)	
	)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Peter D. McDermott, District Judge.

Judgment of conviction for trafficking in a controlled substance, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

WALTERS, Judge Pro Tem

Kerry Richard Klingler pled guilty to a charge of trafficking in marijuana, a felony. He appeals, asserting that the district court erred in denying Klingler's motion to suppress evidence. The evidence was seized as a result of a warrantless search by a probation officer of Klingler's home. The search was conducted without Klingler's consent and while Klinger was on unsupervised probation. We affirm.

I.
FACTS AND PROCEDURAL BACKGROUND

Klingler was placed on supervised probation on a suspended sentence for criminal non-support of his children. He signed an agreement of supervision that waived his Fourth Amendment rights. Klingler later violated his probation and the district court revoked the probation and reinstated the previously suspended sentence. After a period of retained jurisdiction the district court again suspended the sentence and placed Klingler on unsupervised

probation for fourteen years. Klingler did not sign another waiver of his Fourth Amendment rights, but was ordered by the court, as conditions of probation, not to possess or use any controlled substances or commit further crimes.

During a weekly meeting between probation officers and detectives where information was exchanged, a detective informed a probation officer that Klingler "may be dealing large amounts of marijuana or narcotics." The probation officer testified later that Klingler's name had come up twice before, and that day was the second time the probation officer had heard that Klingler might be selling narcotics out of his home. The probation officer then contacted the court and received permission to search Klingler's residence to determine if Klingler was complying with the conditions of his unsupervised probation. There the probation officer, assisted by police officers, found 634 grams of marijuana and some methamphetamine. As a result, the state charged Klingler with one count of trafficking in marijuana and one count of possession of methamphetamine.

Klingler moved to suppress the evidence found pursuant to the search. The district court denied the motion finding that there were reasonable grounds for the warrantless search by the probation officer based on the information received from the detective and Klingler's status as a probationer.

Klingler entered a conditional guilty plea to trafficking in marijuana, reserving the right to appeal the denial of his suppression motion, and the state dismissed the methamphetamine possession charge. Klingler timely appealed from the judgment of conviction. The sole issue raised on appeal is whether the district court erred in denying Klingler's motion to suppress.

II.
STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the trial court's determination as to whether constitutional standards have been satisfied in light of the facts found. *State v. Morris*, 131 Idaho 562, 565, 961 P.2d 653, 656 (Ct. App. 1998); *State v. Pick*, 124 Idaho 601, 603, 861 P.2d 1266, 1268 (Ct. App. 1993); *State v. Heinen*, 114 Idaho 656, 658, 759 P.2d 947, 949 (Ct. App. 1988). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v.*

Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999). The reasonableness of a given search or seizure is a question of law requiring our independent review. *Morris*, 131 Idaho at 565, 961 P.2d at 656; *State v. McIntee*, 124 Idaho 803, 804, 864 P.2d 641, 642 (Ct. App. 1993); *Heinen*, 114 Idaho at 658, 759 P.2d at 949.

III.
ANALYSIS

The Fourth Amendment of the United States Constitution and Art. I, § 17 of the Idaho Constitution forbid unreasonable searches. A warrantless search is per se unreasonable and the fruits of that search are usually suppressible unless the search falls within certain specific and well-delineated exceptions. *State v. Harwood*, 94 Idaho 615, 617-18, 495 P.2d 160, 162-63 (1972). One of the exceptions to the warrant requirement is a search conducted pursuant to the administration of probation or parole. *State v. Vega*, 110 Idaho 685, 687, 718 P.2d 598, 600 (Ct. App. 1986); *State v. Pinson*, 104 Idaho 227, 231-32, 657 P.2d 1095, 1099-1100 (Ct. App. 1983). For this exception to be applicable, the state must show that the warrantless search was reasonable; that is, a probation officer may make a warrantless search of a probationer and his residence if the officer has reasonable grounds to believe that the probationer has violated some condition of probation and the search is reasonably related to the disclosure or confirmation of that violation. *Pinso*n, 104 Idaho at 233, 657 P.2d at 1101. A probation officer may also enlist the aid of the police when conducting a justified search. *Id.*

Similar to this Court's determinations in *Pinson* and *Vega*, the United States Supreme Court upheld the warrantless search of a probationer's residence by a probation officer in *Griffin v. Wisconsin*, 483 U.S. 868 (1987). In *Griffin*, the Court held that the state's operation of a probation system presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements. *Griffin*, 483 U.S. at 873-74. The Court noted that probationers "do not enjoy 'the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions.'" 483 U.S. at 874 (citation omitted). The Court determined that the special needs of the state's probation system make the warrant requirement impracticable and justify replacement of the standard of probable cause by a standard based upon "reasonable grounds" to permit a warrantless probation search. *Griffin*, 483 U.S. 875-76.

In *Griffin* the Court approved the standard of "reasonable grounds" as it appeared in a regulation that had been adopted by the State of Wisconsin. In Idaho we have the same "reasonable grounds" standard but it has been enunciated through case law. *See Pinson*, 104 Idaho at 233, 657 P.2d at 1101. In *Pinson*, we held that

> For proper supervision of a probationer, a probation officer is required to know more than merely whether the probationer is law abiding. He must also know that the probationer is not involved in activities or associations prohibited by the probation agreement. These considerations give rise to a need for a probation officer to know that the probationer is complying with all terms and conditions of probation. Accordingly, we hold that a probation officer may make a warrantless search of a probationer if (a) he has reasonable grounds to believe that the probationer has violated some condition of probation and (b) the search is reasonably related to disclosure or confirmation of that violation.

Id.

The Supreme Court in *Griffin* found the reasonable grounds standard satisfied in circumstances nearly identical to those presented here. The Court said:

> . . . [W]e think it reasonable to permit information provided by a police officer, whether or not on the basis of firsthand knowledge, to support a probationer search. The same conclusion is suggested by the fact that the police may be unwilling to disclose their confidential sources to probation personnel. For the same reason, and also because it is the very assumption of the institution of probation that the probationer is in need of rehabilitation and is more likely than the ordinary citizen to violate the law, we think it enough if the information provided indicates, as it did here, only the likelihood ("had or might have guns") of facts justifying the search.

Griffin, 483 U.S. at 879-80. Here, the district court relied extensively on *Griffin* in reaching its decision to deny Klingler's motion to suppress. Inexplicably, both the appellant and the respondent failed to discuss, distinguish or even cite *Griffin* in their appellate briefs on this appeal, notwithstanding that parties are expected to submit and discuss all mandatory authorities relevant to their positions on the issues raised in an appeal. The district court's memorandum decision incorporated the pertinent principles set forth in *Griffin* and in this Court's opinion in *Pinson*. Neither party suggests that the district court misapplied either of those cases, which we find are controlling in this review.

Klingler argues that the information received by the probation officer from a detective was a tip from an unknown source that did not rise to the level of reasonable grounds that would allow the probation officer to search Klingler's residence. He suggests that because he was not

under supervision by the probation officer, the officer did not have any personal information about Klingler to consider with the anonymous tip in deciding to conduct the search.

Klingler's arguments are not persuasive toward deciding the legality of the search. While we recognize that a supervising probation officer certainly would be more familiar with the personal affairs of a probationer, we are not persuaded that warrantless probationary searches should be limited only to supervised probationers. In the present case, the circumstances explained by the probation officer show that the "tip" was received from a known police detective (just as in *Griffin*) during a scheduled information-exchange meeting, after the probation officer twice before had heard Klingler's name brought up in such meetings and for the second time in connection with suspected sales of illegal drugs. The sale of illegal drugs by Klingler, if true, would be contrary to the conditions of his unsupervised probationary release. Because this case is indistinguishable from *Griffin*, we agree with the district court that the confidential information received by the probation officer was sufficient to constitute reasonable grounds to search Klingler's residence. We therefore conclude that the district court correctly denied Klingler's motion to suppress on the ground that the search was valid as a warrantless probationary search under *Griffin* and *Pinson*.

IV.

CONCLUSION

The district court correctly denied Klingler's motion to suppress evidence. The judgment of conviction for trafficking in marijuana is affirmed.

Chief Judge PERRY and Judge LANSING **CONCUR**.